## 48A C.J.S. Judges § 180

**Corpus Juris Secundum**  |  August 2023 Update

**Judges**
Joseph Bassano, J.D.; Khara Singer-Mack, J.D.; Thomas Muskus, J.D; Karl Oakes, J.D. and Jeffrey J. Shampo, J.D.

**VI. Authority, Powers, and Duties**

**H. Particular Judges**

**1. Successor Judges**

**a. Authority to Make Decision on Evidence Heard by Predecessor**

## § 180. Waiver of right to decision by original judge; stipulation or consent to decision by successor

Topic Summary  |  References  |  Correlation Table

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**West's Key Number Digest**

West's Key Number Digest, Judges 🔑 32

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**It has been held that a party may waive the due process right to a decision by a judge who has heard the evidence, thereby authorizing a successor judge to make a decision in the case, but there is also contrary authority.**

The right to have a decision made by the trial judge who presided over the entire matter has been held to be so basic and fundamental that it cannot be waived by the failure of counsel to object to a successor judge's exercise of authority in a case tried before a predecessor who has failed to render findings of fact and conclusions of law.[1] Contrary authority holds that a party may waive the due process right to a decision by a judge who has heard the evidence, thereby authorizing a successor judge to make a decision in a case in which evidence was presented to and heard by a judge who has failed to make findings of fact and conclusions of law or render judgment.[2]

Waiver of the right to a decision by a judge who has heard the evidence may be accomplished by a party's failure to object to the successor judge's exercise of authority.[3] Additionally, such right may be waived where all parties consent[4] or stipulate[5] to having their case heard and decided by a successor judge based on the transcript of the trial held before the predecessor.[6] At the same time, however, it has also been held that under some circumstances the credibility of the witnesses may be so vital that a new trial must be conducted by the successor even when the parties have stipulated to the successor's authority to decide the case on evidence heard by the predecessor.[7]

A waiver of the right to a decision by a judge who has heard the evidence must be done in a knowing, voluntary, and intelligent manner.[8]

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Footnotes

| 1 | N.Y.—Connelly-Logal v. West, 272 A.D.2d 920, 708 N.Y.S.2d 225 (4th Dep't 2000). |
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| 2 | Conn.—Hearon v. Hearon, 19 Conn. L. Rptr. 649, 1997 WL 381234 (Conn. Super. Ct. 1997).<br><br>Iowa—In re Marriage of Seyler, 559 N.W.2d 7, 84 A.L.R.5th 775 (Iowa 1997).<br><br>N.D.—Binder v. Binder, 557 N.W.2d 738 (N.D. 1996).<br><br>S.D.—Hinman v. Hinman, 443 N.W.2d 660 (S.D. 1989). |
| 3 | Alaska—Moffitt v. Moffitt, 749 P.2d 343 (Alaska 1988).<br><br>**Successor's use of taped testimony**<br>Alaska—Matter of C.L.T., 597 P.2d 518 (Alaska 1979).<br><br>**Consideration of transcript from prior hearing**<br>R.I.—Phelps v. Bay St. Realty Corp., 425 A.2d 1236 (R.I. 1981). |
| 4 | Fla.—Berube v. State, 33 So. 3d 102 (Fla. 2d DCA 2010).<br><br>S.C.—Christy v. Christy, 354 S.C. 203, 580 S.E.2d 444 (2003). |
| 5 | N.M.— Grudzina v. New Mexico Youth Diagnostic & Development Center, 104 N.M. 576, 1986-NMCA-047, 725 P.2d 255 (Ct. App. 1986), writ quashed, 104 N.M. 460, 722 P.2d 1182 (1986). |
| 6 | S.C.—Christy v. Christy, 354 S.C. 203, 580 S.E.2d 444 (2003). |
| 7 | Ill.—In re Marriage of Sorenson, 127 Ill. App. 3d 967, 82 Ill. Dec. 906, 469 N.E.2d 440 (5th Dist. 1984).<br><br>N.M.— Grudzina v. New Mexico Youth Diagnostic & Development Center, 104 N.M. 576, 1986-NMCA-047, 725 P.2d 255 (Ct. App. 1986), writ quashed, 104 N.M. 460, 722 P.2d 1182 (1986). |
| 8 | N.D.—Binder v. Binder, 557 N.W.2d 738 (N.D. 1996). |

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